



1250 Connecticut Ave, NW, Suite 200
Washington, DC 20036

July 19, 2011

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St. SW
Washington, DC 20554

Re: MB Docket No. 10-91; CS Docket No. 97-80; MB Docket No. 07-269

Dear Ms. Dortch:

My name is Andrew Langer, and I am the President of the Institute for Liberty (“IFL”). By way of background, the Institute for Liberty is a non-profit 501(c)(4) membership-based advocacy organization which focuses on policy issues that affect small businesses and entrepreneurs in the United States. IFL believes that small businesses are the engine of the American economy, and that the federal government’s role is to promote, and not hinder, the creation and growth of these small businesses. To this end, we very much appreciate Chairman Genachowski’s recognition of this important driver of the American economy.¹ Similarly, we also appreciate Chairman Genachowski’s enthusiastic endorsement of President Obama’s commitment to eliminate regulations that have “outlived their usefulness.”²

Given the above, IFL is puzzled that the Commission is considering moving beyond its antiquated and heavy-handed CableCard regime to a new and even more intrusive AllVid paradigm. As CableCard has wasted no less than \$1 billion to date with nothing to show for it, it makes little sense to repeat prior mistakes with AllVid. Instead, consistent with President Obama’s two Executive Orders, IFL recommends that the Commission utilize the sunset provisions contained in Section 629(e) and put an end to this outdated and excessively burdensome mandate.

To help aid the Commission in its analysis, IFL is pleased to attach and enter into the record in the dockets listed above two studies that examine the law and economics of this important issue.

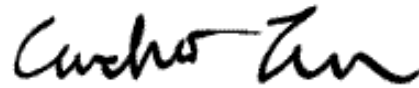
¹ March 4, 2010 Remarks of Chairman Julius Genachowski, *Small Businesses and Broadband: Unlocking a Key Engine of Job Creation in the 21st Century*, DC Department of Small and Local Business Development, Washington, DC (available at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296675A1.pdf).

² July 11, 2011 Statement from FCC Chairman Julius Genachowski on the Executive Order on Regulatory Reform and Independent Agencies (available at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-308340A1.pdf).

The first paper we are submitting is PHOENIX CENTER POLICY PAPER No. 41, *Wobbling Back to the Fire: Economic Efficiency and the Creation of a Retail Market for Set-Top Boxes*. This is the only study of which we know that provides an in-depth and credible analysis of the economics of the set-top box problem. At bottom, the Phoenix Center finds that the root cause of why the Commission's efforts to implement Section 629 lies not (as many would claim and believe) with MVPD malfeasance, but with the simple fact that a retail market for set-top boxes is just plain inefficient. And, because markets abhor inefficiency, regulatory intervention—CableCard or AllVid—is doomed to fail.

The second paper we are submitting is PHOENIX CENTER POLICY BULLETIN NO. 29 *Outliving its Usefulness: A Law and Economics Argument for Sunset of Section 629*. In this paper, the Phoenix Center sets forth sound economic, legal and evidentiary arguments to support a sunset of Section 629 under that section's unique statutory provisions. As the Phoenix Center explains, sunset hinges on the definition of "fully competitive," which the Center defines as a condition where market forces are sufficiently strong to eliminate the need for government regulation. After a review of the evidence using this definition, the Phoenix Center finds that there is a plausible legal and evidentiary case for sunset. Indeed, as the authors note, "Present market conditions in the multichannel video market, while not perfectly competitive in the textbook sense, are such that regulatory efforts are unlikely to create more benefits than costs. As a result, Section 629 has 'outlived its usefulness' and should be put to bed."

Respectfully submitted:



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President
Institute for Liberty

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Attachments:

T. Randolph Beard, George S. Ford, Lawrence J. Spiwak, and Michael Stern, PHOENIX CENTER POLICY PAPER NO. 41, *Wobbling Back to the Fire: Economic Efficiency and the Creation of a Retail Market for Set-Top Boxes* (December 2010).

George S. Ford and Lawrence J. Spiwak, PHOENIX CENTER POLICY BULLETIN NO. 29, *Outliving its Usefulness: A Law and Economics Argument for Sunset of Section 629* (June 2011).